

Remarks

Claim 17 has been corrected as indicated by the Examiner. Claim 15 has been canceled. These amendments are not the addition of new matter, nor they raise new issues. Accordingly, Applicant respectfully asks the Examiner to enter the amendments.

Claims 2, 4, 5, 7, 9, 14 and 17 – 19 remain in the application.

The rejection of claim 15 under 35 U.S.C. §112 has been obviated by canceling claim 15.

Applicant respectfully traverses the rejection of claims 2, 4, 7, 9, 14 and 18 under 35 U.S.C. §102(b) over Lam, U.S. Patent No. 6,001,750.

Claim 14 and the claims dependent thereon patentably distinguish over Lam '750 in the recitation of the combination of: the fibrous base material comprising 75% to 85%, by weight, fibers; 15% to 25%, by weight, fillers; a fibrous material having an average voids volume from about 50% to about 85%; and a fibrous base material comprising 35 to 45%, by weight, of a less fibrillated aramid fiber; 5 to 15%, by weight, cotton fibers, and 2 to 20%, by weight, carbon fibers.

Nowhere does Lam '750 disclose or suggest this combination.

The Federal Court has set out the standard for anticipation rejections under section 102:

A determination that a claim is invalid as being anticipated or lacking novelty

under 35 U.S.C. §102 requires a finding that “each and every limitations is found either expressly or inherently in a single prior art reference.” Oakley, Inc. v. Sunglass Hut Int’l, 316 F.3d 1331, 1339, 65 USPQ2d 1321, 1325 (Fed.Cir. 2003) (citation omitted).

Every element of the claimed invention must be literally present arranged as in the claims”. Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed.Cir. 1989).

There must be no difference between the claimed invention and the reference disclosure, as viewed by a person having ordinary skill in the art. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed.Cir. 1991).

Clearly, Lam '750 does not disclose what is claimed.

Accordingly, Applicant respectfully asks that the Examiner withdraw the rejection under 35 U.S.C. §102.

Applicant respectfully traverses the rejection of claims 2, 4, 7, 9, 14, 17 and 18 under 35 U.S.C. §102(b) over Lam, U.S. Patent No. 6,130,176.

Claim 14 and the claims dependent thereon patentably distinguish over

Lam '176 in the recitation of the combination of: the fibrous material comprising 75% to 85%, by weight, fibers; 15% to 25%, by weight, fillers; a fibrous base material having an average voids volume from about 50% to about 85%; and a fibrous base material comprising 35 to 45%, by weight, of a less fibrillated aramid fiber; 5 to 15%, by weight, cotton fibers, and 2 to 20%, by weight, carbon fibers.

Nowhere does Lam '176 disclose or suggest this combination.

Claims 17 and 18 patentably distinguishes over Lam '176 in the recitation of the combination of: the fibrous base material comprising 75% to 85%, by weight, fibers; 15% to 25%, by weight, fillers; a fibrous base material having an average voids volume from about 50% to about 85%; and a fibrous base material comprising 40 to 50%, by weight, of a less fibrillated aramid fiber, 15 to 25%, by weight, cotton fibers, and 10 to 20%, by weight, carbon fibers.

Nowhere does Lam '176 disclose or suggest this combination.

The Federal Court has set out the standard for anticipation rejections under section 102:

A determination that a claim is invalid as being anticipated or lacking novelty under 35 U.S.C. §102 requires a finding that "each and every limitations is found either expressly or inherently in a single prior art reference." Oakley, Inc. v. Sunglass Hut Int'l, 316 F.3d 1331, 1339, 65 USPQ2d 1321, 1325 (Fed.Cir. 2003) (citation omitted).

Every element of the claimed invention must be literally present arranged as in the claims". Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed.Cir. 1989).

There must be no difference between the claimed invention and the reference disclosure, as viewed by a person having ordinary skill in the art. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed.Cir. 1991).

Accordingly, Applicant respectfully asks that this rejection under 35 U.S.C. §102 be withdrawn.

Applicant traverses the rejection of claims 5 and 19 under 35 U.S.C. §103(a) over Lam '750 in view of Bortz, U.S. Patent No. 5,646,076.

Claims 5 and 19 patentably distinguishes over Lam and Bortz in the recitation of the combination of: the fibrous material comprising 75% to 85%, by weight, fibers; 15% to 25%, by weight, fillers; a fibrous base material having an average voids volume from about 50% to about 85%; wherein the fibrous material is a woven fibrous material.

Nowhere do Lam and Bortz disclose or suggest this combination.

To establish a *prima facie* case of obviousness, the Examiner must, *inter alia*, show “some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.: In re Thrift, 298 F.3d 1357, 1363, 63 USPQ2d 2002, 2006 (Fed.Cir. 2002). “When the references cited by the examiner fail to establish a *prima facie* case of obviousness, the rejection is improper and will be overturned.” In re Brouwer, 77 F.3d 422, 425, 37 USPQ2d 1663, 1666 (Fed.Cir. 1996).

Of utmost importance is the reliance upon facts and not conclusory assertions to establish obviousness. Assumptions about knowledge in the art cannot substitute for evidence thereof.

Applicants respectfully submit that their specification is the only source of support for the claimed arrangement of method steps or programmed system. See In re Gal, 980 F2d 717, 25 USPQ 2nd 1076 (Fed.Cir. 1992).

Accordingly, Applicants respectfully ask that the Examiner withdraw the rejection under 35 U.S.C. §103.

Applicant also respectfully traverses the rejection of claims 5 and 19 under 35 U.S.C. §103(a) over USPN 6,130,176 to Lam in view of USPN 5,646,076 to Bortz.

Claims 5 and 19 patentably distinguish over Lam and Bortz in the recitation

of the combination of: the fibrous material comprising 75% to 85%, by weight, fibers; 15% to 25%, by weight, fillers; a fibrous base material having an average voids volume from about 50% to about 85%; and a fibrous base material of a woven fibrous material.

Nowhere do Lam and Bortz disclose or suggest this combination.

Lam is deficient and Bortz does not disclose the deficiency. Bortz is silent about the amount of fiber used. Bortz does not disclose the amount of filler claimed. Bortz does not disclose the void volume claimed.

Bortz fails to disclose or suggest what Applicant claims. The mere existence of the elements is not even found in the reference. The Examiner cannot add to Bortz where is not there.

Without Applicant's specification for a road map, one would not reach the claimed combination. Clearly, the prior art has no appreciation for the high fibrous content Applicant claims.

The Examiner also states that the proportions appear to be within the ordinarily level of skill of one in the art. Applicant respectfully submits that this conclusion is unsupported in fact or theory. No prior art discloses the high fiber contents Applicant claims. No reference has been cited showing the high fiber contents. One cannot add facts to a reference. No such fact exists in Bortz.

Clearly, the reference is deficient.

The reference is deficient yet the Examiner concludes that it would have been obvious to supply the deficiencies.

Applicant respectfully submits that no basis in fact or theory exists for drawing such a conclusion.

The Examiner has failed to establish a prima facie case of obviousness because the reference does not teach or suggest the key elements of what is claimed. See In re Kuehn, 441 F.3d 977, 985-86, 78 U.S.P.Q. 1329, 1335 (Fed.Cir. 2006). Appellant has overcome the rejection by showing insufficient evidence of prima facie obviousness; In re Piasecki, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed.Cir. 1984).

The Examiner does not provide any evidentiary basis to support his findings. See In re Ahlert, 424 F.2d 1088, 1091, 165 U.S.P.Q. 418, 420-21 (CCPA 1970).

the Examiner does not provide any evidentiary basis to support his findings. See In re Ahlert, 424 F.2d 1088, 1091, 165 U.S.P.Q. 418, 420-21 (CCPA 1970).

Without Applicant's specification for a road map, one would not reach the claimed combination. Clearly, the prior art has no appreciation for the high fibrous content and combination Applicant claims.

Accordingly, Applicant respectfully asks that the Examiner withdraw the rejection under 35 U.S.C. §103.

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Therefore, Applicant respectfully submits that claims 2, 4, 5, 7, 9, 14 and 17 – 19 are in condition for allowance and respectfully ask that the Examiner pass the claims to issue.

Respectfully submitted,

EMCH, SCHAFFER, SCHAUB
& PORCELLO CO., L.P.A.

A handwritten signature in black ink, appearing to read 'P. Pacella', with a long horizontal flourish extending to the right.

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